



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. R. v Canada Employment Insurance Commission*, 2019 SST 898

Tribunal File Number: GE-19-1305

BETWEEN:

**H. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Lilian Klein

HEARD ON: April 3, 2019

DATE OF DECISION: May 7, 2019

## **DECISION**

[1] The appeal is allowed. I find that the Appellant (who I refer to as the Claimant) showed just cause for voluntarily leaving her employment since she had no reasonable alternative given the particular circumstances of her case.

## **OVERVIEW**

[2] The Claimant left her job on December 26, 2018, after experiencing two near accidents driving home on icy country roads late at night after her evening shift ended. The Respondent (the Commission) found that she did not show just cause for voluntarily leaving her job since she had the reasonable alternative of finding another job before she quit. After she requested a reconsideration, it maintained its decision.

[3] The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal), submitting that she had explored all her reasonable alternatives, such as trying to change to a day shift. She argued that her language barrier had prevented her from understanding and answering the Commission's questions, and that it did not allow her daughter to help her out by interpreting these questions.

[4] I must decide whether the Claimant was able to show just cause by demonstrating that she had no reasonable alternative to quitting her job when she did.

## **PRELIMINARY MATTERS**

[5] Due to technical difficulties, the hearing was delayed and the interpreter provided by the Tribunal could no longer provide the interpretation. To avoid adjourning the hearing, I allowed Claimant's daughter—who was representing her mother and giving testimony—to assist with the interpretation.

## **ISSUES**

[6] **Issue 1: Did the Claimant leave her employment voluntarily?**

[7] **Issue 2: If so, did the Claimant show just cause for leaving?**

## ANALYSIS

[8] When claimants leave a job, they are not automatically entitled to employment insurance benefits. They cannot receive benefits if they voluntarily leave their employment without just cause.<sup>1</sup> They can show just cause if—on a balance of probabilities and considering all the circumstances—they had no reasonable alternative to leaving.<sup>2</sup>

[9] The Commission has the burden of proof to show that leaving the job was voluntary.<sup>3</sup> Once the Commission has proved that the departure was voluntary, the burden shifts to the claimant to show just cause for leaving.<sup>4</sup>

### **Issue 1: Did the Claimant leave her employment voluntarily?**

[10] Yes. The Claimant does not dispute that she could have stayed on at her job, but decided to quit. The legal test to determine whether claimants left voluntarily is whether they had this type of choice.<sup>5</sup> Since the Claimant had this choice, I find that the Commission met its burden to show that she left voluntarily.

### **Issue 2: Did the Claimant show just cause for leaving?**

[11] Yes. Considering all her circumstances, I find that the Claimant had just cause for leaving when she became too scared to continue her late-night commute in dangerous icy conditions. I find that she had no reasonable alternative to leaving once her employer refused her request to change to a day shift.

[12] To determine just cause, I must consider all the relevant circumstances. Claimants may have a good reason for leaving a job but there is a difference between a good reason and just cause under the EI Act.<sup>6</sup> The legislation lists several situations that may show just cause but this list is non-exhaustive, meaning that other circumstances can also be relevant.<sup>7</sup>

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<sup>1</sup> They are “disqualified” under ss. 29 and 30 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> *Attorney General of Canada v Imran*, 2008 FCA 17.

<sup>3</sup> The term “burden” describes which party must provide sufficient evidence of its position to prove its case.

<sup>4</sup> *Attorney General of Canada v White*, 2011 FCA 190.

<sup>5</sup> *Attorney General of Canada v Peace*, 2004 FCA 56.

<sup>6</sup> *Attorney General of Canada v. Laughland*, 2003 FCA 129.

<sup>7</sup> S. 29(c) of the EI Act.

[13] I considered all the Claimant's circumstances based on the evidence before me. She submitted that she had to leave her employment because she lost confidence in her ability to drive alone on country roads late at night in icy conditions. Her commute was at least 90 minutes each way. She had been able to manage the drive the previous winter after moving to a rural area further away from her job, but then had two near-accidents in December 2018. She submitted that even winter tires did not make her feel secure once the weather started to deteriorate. She argued that the driving conditions in December 2018, were already worse than those she had experienced when driving home from work during the winter of 2017/2018.

[14] The Commission submitted that delaying her resignation until she found another job would have been a reasonable alternative to quitting. It argued that she did not prove her situation was so intolerable that she had to leave immediately without first securing other employment.

[15] I give substantial weight to the Claimant's testimony that she spoke to her employer, as is required before quitting a job.<sup>8</sup> She reported that she asked her supervisor to change her to a daytime shift so that at least she would not have to drive home late at night in poor driving conditions. However, she did not have the seniority to get her choice of shifts.

[16] I also give significant weight to the employer's statement, as submitted by the Commission, that there was no possibility of a transfer and that the Claimant was not eligible for a leave of absence.

[17] Even though the Commission reported the Claimant as saying that she did not search for another job before quitting, I accept her submission that she made efforts to look for other work. I found her sworn testimony credible since she was open and direct in her responses.

[18] Moreover, the Claimant's daughter gave testimony that her mother had not understood the Commission's questions and had asked her to help by interpreting them. The daughter testified that the Commission had refused to let her help her mother with the phone interview.

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<sup>8</sup> *Attorney General of Canada v Hernandez*, 2007 FCA 320.

Given this language barrier, I cannot be confident that the Claimant understood the Commission's questions when she responded that she had not looked for other work.

[19] I find, on a balance of probabilities, that the Claimant met her burden of proof to show she had no reasonable alternative to leaving her job. In making this finding, I have taken into account the principle that claimants have a responsibility not to risk unemployment.<sup>9</sup> That is why remaining employed is generally considered a reasonable alternative to quitting.<sup>10</sup>

[20] However, after considering all the circumstances of this particular case, I find that it would not have been a reasonable alternative for the Claimant to remain employed while waiting for her job search to be successful. I conclude that she was not required to tolerate a potentially dangerous commute to stay employed solely on the basis that she had been able to manage the drive the previous winter.

[21] To sum up, I find that the Claimant met her burden of proof to show just cause for voluntarily leaving her employment since she had no reasonable alternative.

## CONCLUSION

[22] The appeal is allowed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	April 3, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	H. R., Appellant  X, Representative for the Appellant

<sup>9</sup> *Attorney General of Canada v Langlois*, 2008 FCA 18.

<sup>10</sup> *Attorney General of Canada v Murugaiah*, 2008 FCA 10.